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## ABSTRACT

On January 13, 1988, the U.S. Supreme Court announced its decision in "Hazelwood School District v. Kuhlmeier," giving educators the right to exercise "editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns." A study explored the immediate reaction to "Hazelwood v. Kuhlmeier" from professional press associations, journalism reviews, and newspaper editorials and used the results of a mail survey of high school advisers to assess the current level of prepublication review and controversial content and anticipated impact of the case on student publications in Tennessee. The study also reported survey results on the amount of attention the case received in schools, the advisers' perceptions of attitudes of student staff members, faculty, and other adults in the community, and the advisers' own attitudes about the outcome of the case. Survey results indicate that "Hazelwood" had no immediate effect on Tennessee high school publications and few advisers anticipate changes in their publishing situations, a third of which (53% of newspapers) are already subject to prepublication review by school administrators. Professional and editorial reaction to the decision was mixed. (Two tables of data and 63 notes are included.) (MS)

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**HAZELWOOD V. KUHLMAYER: NATIONAL PRESS REACTION****TO THE DECISION AND ITS IMPACT IN TENNESSEE HIGH SCHOOLS**

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**HAZELWOOD V. KUHLMIEER: NATIONAL PRESS REACTION**  
**TO THE DECISION AND ITS IMPACT IN TENNESSEE HIGH SCHOOLS**

**Background: The Court Decision**

On Jan. 13, 1988, the U. S. Supreme Court announced its decision in Hazelwood School District et al. v. Kuhlmeier et al.,<sup>1</sup> giving educators the right to exercise "editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."<sup>2</sup> The Supreme Court, in a 5-3 ruling, reversed the 1986 decision of the Eighth Circuit Court of Appeals,<sup>3</sup> which had considered the student newspaper in question a public forum, thus precluding school officials from censoring its contents except when "necessary to avoid material and substantial interference with school work or discipline. . . or the rights of others."<sup>4</sup>

The case began in May 1983 when the principal at Hazelwood East High School in the St. Louis suburb of Hazelwood, Mo., removed two pages from an issue of the student newspaper, Spectrum, because he considered part of the content of those pages to be inappropriate. One offending article described the experiences of three Hazelwood East students with pregnancy; the other discussed the impact of divorce on students.

The principal said later that he had been concerned that the pregnant students discussed in the article would be identifiable although false names were used. Too, he said that references to sexual activity and birth control were inappropriate for some

students in the high school. The principal objected to the article about divorce because divorced parents whose daughter was quoted in the story had not been given an opportunity to respond and had not consented to publication.

Two weeks before the articles were scheduled to appear, the faculty adviser for Spectrum obtained a release from his teaching contract and began working as a consultant. The adviser had been warned by the principal earlier that his job was in jeopardy if he allowed controversial material to be published. He told a writer for The Nation, "I just felt there was no use fighting city hall."<sup>5</sup>

Following the principal's deletion of the pages, three staff members of the Spectrum, sued the school district, arguing that the deletion violated their First Amendment rights. The district court upheld the censorship,<sup>6</sup> reasoning that the principal's actions had "a substantial and reasonable basis"<sup>7</sup> and was a legitimate exercise of his authority to restrain expressive activities that are "an integral part of the school's educational function."<sup>8</sup> When the students appealed to the Eighth Circuit, that court delivered an opinion in their favor, relying on forum theory and the "material and substantial interference" test from Tinker.<sup>9</sup>

From its beginning the case received close attention from press and scholastic organizations, with predictable allegiances forming. Scholastic press organizations and several professional media associations aligned themselves with the students' arguments, while the National Association of Secondary School

Principals and National School Boards Association stood solidly behind the Hazelwood East school authorities. These organizations filed amici curiae briefs in support of their respective positions. Organizations whose names appeared on one brief in support of respondents were the Student Press Law Center, Journalism Education Association, Columbia Scholastic Press Advisers Association, Quill and Scroll Society, Journalism Association of Ohio Schools, National Scholastic Press Association/Associated Collegiate Press, Missouri Journalism Education Association, Southern Interscholastic Press Association, Garden State Scholastic Press Association, College Media Advisers, Community College Journalism Association, Association for Education in Journalism and Mass Communication. Another amici curiae brief filed in support of the student press came from the American Society of Newspaper Editors, National Association of Broadcasters, Reporters Committee for Freedom of the Press and The Society of Professional Journalists, Sigma Delta Chi.

#### **Purpose and Method of this study**

This study has two parts: (1) a description of the immediate reaction to Hazelwood from professional press associations, journalism reviews, and newspaper editorials; (2) an assessment of the impact or anticipated impact of the case on student publications in one state.

This study sought to determine the impact of Hazelwood on student publications in Tennessee high schools in terms of immediate or anticipated changes in the operation of the

publications, the amount of attention students and school personnel gave to the case, and their attitudes about the Court's opinion.

Another purpose was to learn the extent of prepublication review of high school publications in Tennessee and advisers' perceptions of the amount of press freedom and the amount of controversy that existed in their individual publishing situations. In addition, data were gathered about the publishing situations to see whether patterns existed that might explain differences in impact, attitudes, and attention from one school to another.

The method for the first part of the study consisted of reading of material that was published in the weeks following the opinion. The Quill, Presstime, and The Bulletin were used to gauge attention and attitude of the press organizations that publish them. In addition, Washington Journalism Review, Columbia Journalism Review, and a convenience sample of newspaper editorials were read. A mail questionnaire was used to gather data for the second part of the study.

In mid-April a 30-item questionnaire was mailed to advisers of the 109 member publications of the Tennessee High School Press Association. Responses were received from 29.4 percent of the advisers. It was decided at the outset that no follow-up requests from non-respondents would be made because advisers had been guaranteed anonymity and because the academic year would end soon after the initial mailing.

### **Reaction to the Court's Decision**

On the day that Hazelwood was announced and on the following day, the Court's opinion received headline treatment and air time in much of the nation's media. It was front-page news for major newspapers, including the New York Times, Baltimore Sun, The Philadelphia Inquirer, The Washington Post, and USA Today. Many papers ran follow-up stories, focusing on reactions to the decision from school administrators, students, and spokespersons from both the scholastic and professional press. Within the week, the case was the topic of numerous newspaper editorials and letters to the editor. Professional association publications carried stories during the next several months.

### **Reaction from Professional Press Associations**

Student press associations and many journalism and civil liberties organizations denounced the decision as a violation of students' First Amendment rights. At its meeting during the same week that the decision was announced, for example, the Secondary Education division of the Association for Education in Journalism and Mass Communication adopted a statement strongly critical of Hazelwood and urged school officials, scholastic press associations and the professional media to promote a vigorous student press.<sup>10</sup> The entire membership of AEJMC, composed primarily of college and university mass communications teachers, endorsed a similar resolution in July during its annual convention. The First Amendment Congress, which convened in Denver in March 1988, adopted several resolutions decrying

censorship of high school publications and encouraging state legislation to temper the effects of Hazelwood.<sup>11</sup>

The Society of Professional Journalists, Sigma Delta Chi was extremely supportive of the students' position in the case and critical of the Supreme Court's opinion. Paul McMasters, chairman of the Freedom of Information Committee of SDX/SPJ, said, "This decision cuts the First Amendment legs off the student press."<sup>12</sup> The Quill, published by SPJ,SDX, carried stories about the decision in its February, March, April and May issues, more stories than any other press association publication. In addition, SPJ,SDX devoted three pages of its 1988-1989 F.O.I. tabloid to Hazelwood.<sup>13</sup>

Dan Dorfman, media critic and former editor of The Quill, was particularly outraged by the decision and its potential chilling effect on a wide range of students' expressive activities. Writing in the February issue, he called upon media corporations and unions and chapters of organizations such as SPJ/SDX to "establish a fund from which student journalists can draw on short notice to print censored publications. The fund would be administrated by a local media lawyer who could review the material for libel and obscenity problems."<sup>14</sup> Dorfman's plan was premised on the idea that the Court's decision in Hazelwood left non-disruptive distribution of non-school-sponsored student publications beyond the reach of school authorities.

The Quill continued to hammer the decision in its May issue, carrying an article by Bruce Sanford, SPJ,SDX general counsel, in which he referred to the opinion as sanctioning a "cleaver"



approach for school administrators. In his analysis of the case, Sanford wrote approvingly of the Tinker test, which, he said, "fosters tolerance for the restless, often provocative giddiness or anger that characterizes youthful speech."<sup>15</sup> Reacting to the professional media's response to the case, Sanford wrote, "the grown-up media are deluding themselves if they dismiss the high court's wholesale deference to governmental control of speech by simply treating the case as a schoolroom matter."<sup>16</sup>

The Quill published yet another article on Hazelwood by Paul McMasters, deputy editorial director of USA Today and chairman of the SPJ,SDX national Freedom of Information Committee. He recounted recent administrative attacks on the collegiate press and questioned the need to muzzle student publications.<sup>17</sup>

Under the headline "Hazelwood v. Kuhlmeier revisited," the March issue of The Quill included three commentaries and key excerpts from the court's opinion.<sup>18</sup> Paul McMasters and Thomas E. Engleman, executive director of The Dow Jones Newspaper Fund, Inc., were both critical of the ruling and suggested ways that the professional press could help student journalists. The third commentary was the Chicago Tribune editorial about Hazelwood, which took the position that the Supreme Court had made the correct ruling for the wrong reasons.

In its monthly freedom of information roundup, The Quill in March published a summary of Michael Gartner's piece that had appeared on the op-ed page of the Wall Street Journal on Feb. 4. Gartner, former president of the American Society of Newspaper Editors, chided his fellow publishers for failing to support full

First Amendment rights for students. "Much of the nation's press has lined up with those who would trade freedom for comfort," Gartner wrote. "But that's not too surprising. The establishment press has been big in the 'I'm for freedom but . . . crowd. . . . They're for freedom but not necessarily for you and me. The free press and the independent judiciary are what make this democracy work. So when the court takes away a freedom and the press files a concurring opinion, it's doubly discouraging."<sup>19</sup>

Two other professional journalism groups, the American Newspaper Publishers Association and the American Society of Newspaper Editors, did not join SPJ,SDX in its strong support to the student position in Hazelwood. Of course, neither of these groups have student chapters. SPJ,SDX student chapters are on college and university campuses where Hazelwood is seen as a potential threat.

The Bulletin, the ASNE publication, devoted its cover and the first 10 pages of its February issue to the decision. Included were a report on what the decision means, reactions, predictions and calls to action by representatives of interested parties. The Bulletin took a more balanced approach than did The Quill, publishing a story by Richard M. Schmidt Jr. and N. Frank Wiggins, who had filed amici curiae briefs on behalf of ASNE, National Association of Broadcasters, Reporters Committee for Freedom of the Press and SPJ,SDX in support of the student press,<sup>20</sup> as well as a piece by Ivan B. Gluckman, general counsel for the National Association of Secondary School Principals and a

major spokesman in favor of censorship authority for school officials.<sup>21</sup>

Presstime, the ANPA publication, took a roundup news story approach in its single story on the case.<sup>22</sup> The lead noted that "specialists in the student press and media lawyers are troubled by potential adverse impact" of the case and "some in the field already are talking about alternatives, such as privately sponsored newspapers that could not be under a school's control." Quoted in the story were Craig Trygstad, executive director of Youth Communication, Engleman, Schmidt, and Mark Goodman, executive director of the Student Press Law Center. ANPA had not joined other news organizations in filing a brief in Hazelwood because its membership was divided on the issue.<sup>23</sup>

#### Reaction from Journalism Reviews

Both Columbia Journalism Review and Washington Journalism Review published stories about Hazelwood; the CJR piece was critical of the opinion, but WJR stopped short of taking a stand against it.

Lyle Denniston, a Baltimore Sun reporter who covers the Supreme Court and publishes widely about legal issues, authored one WJR story on Hazelwood. In "School Principal as Censor," Denniston wrote of the end of a golden era for student journalists and noted that some local editors had become cheerleaders in the campaign for school-board control over student expression. He made general observations about the case but did not take a strong stand against the decision.<sup>24</sup>

In the same issue, WJR ran a piece by free-lancer Christine Bertelson under its "Clippings" department. Bertelson described the dullness of student journalism as practiced at Hazelwood East since 1983 when the case began. She quoted students saying that the school lunch menus had made more interesting reading than the Spectrum and the adviser's acknowledgment that the paper had been "very dull."<sup>25</sup>

The "Comment" section of Columbia Journalism Review in the next issue following Hazelwood carried a full-page, unsigned article under the headline "Open season on the high school press."<sup>26</sup> The article recounted the origins of the case and briefly summarized the majority opinion. Then it took a swipe at the New York Times and the Washington Post, saying, "Curiously, the two newspapers that have been most engaged in past First Amendment cases. . . accepted Justice White's fiction that a newspaper can be merely a classroom exercise."<sup>27</sup>

The article ended with this observation: "The case may have started from an administrator's thoughtlessness, but it has now concluded in new Supreme Court doctrine, very much in tune with recent assumptions that greater control of what students read and say equals better education. Behind these assumptions lies a fear that student freedoms lead only to recklessness and obscenity."<sup>28</sup> The next issue of CJR included an article reporting incidents of censorship since the opinion was announced.<sup>29</sup>

#### Newspaper Editorial Reaction

An Editor and Publisher headline summarizes the situation: "Editorials support censorship decision" with the subhead

reading, "Most editorials support the U.S. Supreme Court ruling that upheld a high school principal's right to censor stories in the student newspaper."<sup>30</sup> E&P reported that a random survey "showed newspaper editorials around the country overwhelmingly supported the . . . ruling . . . . Unlike some media lawyers and journalism association heads who last week denounced the High Court decision as a 'First Amendment disaster,' the editorials, in general, seem to say, 'That's life, kids.'"<sup>31</sup> Most editorial writers, E&P said, took the position that the decision simply put high school editors in the same editor-to-publisher relationship that exists for professional newspapers.

The most common editorial response was to adopt legendary press critic A.J. Liebling's observation that "Freedom of the press is guaranteed only to those who own one." This analysis, of course, ignores the fact that in the case of the public high school, the owner of the press is an agent of the government.

E&P gave this sampling from editorials:

"Actually the majority did provide a suitable civic lesson for the aspiring journalist at Hazelwood High School . . . [by saying] freedom of the press is not and never has been absolute."--Cincinnati Enquirer

"It is a decision in favor of editing--a process that goes on in real newspapers in the real world today."--Detroit News

The Chicago Sun-Times said that had the decision gone the other way it would have been "startlingly new. New, and ridiculous." The Sun-Times questioned whether Justice William Brennan's dissent stood for the premise that "student journalists

have greater rights than working journalists to demand that their copy be printed unedited. Or that government publishers have fewer rights than private publishers?" The paper dismissed arguments that the court ruling would have a chilling effect on school newspapers, urging such "worry-warts to stop conjuring up worst case scenarios to justify unacceptable license."<sup>32</sup>

The Chicago Tribune agreed with its competitor in supporting the result of the ruling, but argued with the Court's reasoning. "The result will be a bad legal precedent that encourages government censorship, softer legal footing for advocates of free speech and a general perception that neither the court nor the press has any idea what the First Amendment is all about. . . . The school board, in this case, is in fact the government, and when you give government a newspaper or the liability for one, expect it to be censored."<sup>33</sup>

The Gary (Ind.) Post-Tribune likewise noted that some school authorities would use "this power wisely with restraint, some use it wisely with vigor and some abuse it. The danger [of the decision] is it will force newspapers to write about nothing but pep rallies and basketball games."<sup>34</sup>

The Record in Bergen County, N.J., agreed with the decision, calling the high school newspaper "a special case. They are an extension of the curriculum. No one would seriously challenge a principal's right to set the curriculum for a class in calculus or literature. That right extends to newspapers."<sup>35</sup> The Buffalo News also took the position that censorship of school newspapers was an educational rather than free press issue.<sup>36</sup>

The Philadelphia Inquirer noted that "if the students had won their case, student editors around the country would have ended up with greater rights than their counterparts in the adult world, where editors at many newspapers often have to fight against timid owners to get controversial articles into print."<sup>37</sup> Noting concern about the chilling effect on the student press that the decision might engender, The Inquirer said that the local school board would serve as a check on a "school official who censors in an arbitrary manner." The editorial minimized the possibility that student opinion would be stifled because "[H]igh school students traditionally have never lacked resources for getting around the restrictions of stuffy authorities."<sup>38</sup>

On Jan. 26, 1988, the Philadelphia Inquirer published a letter that debated its editorial point by point. The letter writer was J. Marc Abrams, former director of the Student Press Law Center, although his previous affiliation with the SPLC was not noted in the published piece. Abrams chastised the editorial writer for being "condescending." Further, he wrote that it is "naive to presume that school boards would call into account school officials who censor in an arbitrary manner. The facts of student-press-rights cases over the past 20 years show that a school board is as often the offender as is a school official. Equally naive is your assertion that students can "leak the story to the local newspaper. How often has The Inquirer published news of import to only one high school?"<sup>39</sup>

The New York Times was more temperate than most newspapers in its support for the decision and urged school officials to use

moderation in exercising their new authority. The Times commended the Hazelwood students who began the suit for tackling "tough subjects, where many school newspapers content themselves with publishing dull community billboards . . . . The decision is a challenge to educators to help their students tell the story fairly and accurately, not to squelch them."<sup>40</sup>

The Eugene (Ore.) Register-Guard also "supported the court without necessarily supporting the school principal." The paper urged principles to use their publisher's status to encourage good journalism.<sup>41</sup>

A few newspapers published editorials against the decision. The Miami Herald, in an editorial headlined "High Court Flunks," wrote, "How sad that the Supreme Court used an ax, not a scalpel, in deciding [the case]."<sup>42</sup>

The St. Louis Post-Dispatch, the closest metropolitan daily to Hazelwood East High School, agreed that there is no absolute right to publish but criticized the majority opinion for giving the school board too much latitude. E&P quotes editorial page editor Ed Higgins as saying, "there is a right of freedom of expression-- and the majority opinion . . . trampled all over it." Higgins told E&P that the decision "gave school boards more power than is desirable or necessary. We don't think they have just an arbitrary right to prevent the expression of any controversial issue."<sup>43</sup> The Post-Dispatch reportedly received more than a dozen phone calls complaining about the editorial and the accompanying cartoon.



### Anticipated Impact from Hazelwood

Predictions about the impact of Hazelwood ranged from calamity to business as usual. Some echoed Justice Brennan's dissenting opinion in worrying about the civics lesson taught by the majority opinion. "Instead of teaching children to respect the diversity of ideas that is fundamental to the American system and that our Constitution is a living reality, not parchment preserved under glass, the Court today teaches youth to discount important principles of our government as mere platitudes," Justice Brennan wrote.<sup>44</sup> Students who are taught that the government, in the guise of school authorities, has the authority to censor may grow up to be adults who believe it is permissible for the government to censor the professional press.

It has been suggested that the newspaper industry should be concerned about Hazelwood's impact on future staffing needs since many of today's professional reporters and editors first became interested in journalism through their work on high school papers. If increased censorship discourages bright high school students from working on student newspaper staffs, a source of future newsroom personnel might disappear.<sup>45</sup>

Some commentators worried that the decision would reduce all school newspapers to dull bulletin boards; others, like Everette E. Dennis, apparently believed that most school papers were already dull bulletin boards. Dennis, executive director of the Gannett Center for Media Studies, predicted minimal impact because "[T]he student press is already very timid. It was always a captive voice and now is more captive."<sup>46</sup>

Tom Rolnicki, executive director of the National Scholastic Press Association, predicted that the impact would be limited primarily to those schools "where animosity may exist between the administration and the newspaper." Rolnicki indicated that "the principal is not interested in sticking his or her finger into the newspaper business" at most schools."<sup>47</sup>

A few schools across the nation, however, reported immediate fallout from Hazelwood. Columbia Journalism Review told the story of a California principal who went to the journalism room at 10:15 a.m. Pacific time on Jan. 13 to notify the student newspaper staff that he was immediately exercising his newly announced authority. He ordered the deletion of a controversial story scheduled for the next issue of the paper about an unidentified gay student who had tested positive for the AIDS virus.<sup>48</sup>

The SPJ,SDX-sponsored 1988-1989 F.O.I. Report included these examples of high school censorship:<sup>49</sup>

--five students in Renton, Wash., disciplined for distributing an underground newspaper that reported survey results rating teachers;

--an order to reject an advertisement from Planned Parenthood;

--literary magazine confiscated because a fictional story included the words "pee" and "dick" in a nonsexual context;

--refusal to allow publication of a yearbook survey about drugs and alcohol.

### **The situation in Tennessee**

The Hazelwood decision had no immediate impact on student publications in Tennessee high schools, based on responses to the mail questionnaire in this study. During the three and a half months that elapsed between the Jan. 13 decision and this survey, no respondent reported experiencing any change in policy concerning administrative review.

Further, only 10 percent of the respondents said that a school administrator had indicated that changes would be made in the future in light of the Supreme Court decision. This small percentage could be misleading, however, because half of the respondents said that no administrator had discussed the decision with them. Another 6.7 percent said that the decision had been discussed, but the respondent was uncertain about future changes. One-third of the advisers reported that a school administrator had indicated that no changes were planned in light of Hazelwood.

When asked for their personal opinion about the impact of Hazelwood on their individual publishing situations, advisers expected little change, either because prepublication review and censorship were already prevalent in their schools or because administrators would not choose to use their new authority. Only 3.2 percent said they thought the decision would bring major changes in that the adviser and/or administration would exercise more censorship than in past years.

Forty-five percent saw the decision as bringing about no change in the status quo because the adviser and/or the administration had always controlled what was published. An

equal number said Hazelwood would have no impact because the students had generally been given broad rights and responsibilities to determine content and that practice wasn't likely to change. Six and a half percent of the respondents said they expected greater pre-publication review of material but did not expect that material would be censored.

For slightly more than one third of the schools in this survey Hazelwood is "business as usual," as 34.4 percent of the respondent advisers reported that a school administrator, either the principal or assistant principal, already reviewed material before it was published. Newspapers were more likely to have prepublication review (53 percent) than yearbooks (13 percent).

Despite the existence of prepublication review, respondents indicated that few items had been withheld within the past year. Five advisers said that in only one instance had either copy or art been withheld; six advisers reported that from two to five items had not been published during the past year because of administrative censorship.

Advisers said that administrators had withheld material for the following reasons:

- 7.7% potentially libelous
- 15.4 might invade individual privacy
- 0 might cause legal problems other than libel or privacy
- 15.4 poorly researched and/or written but may be used in a future issue if work is improved
- 19.2 reflects poorly on the high school
- 11.5 subject matter inappropriate for high school students

## 15.4 critical of school policy

## 15.4 other

In the "other" category, respondents gave these comments:

"offensive," "misunderstood by parents," "material would cause undue criticism to one teacher unfairly," "school contest winner problem," "extremely bad taste, would hurt or offend subject (of story)."

Only one adviser reported that a news story had been withheld. Newspaper editorials were the most frequently named as troublesome content, with cartoons or artwork a close second.

Although slightly more than one third of the respondents advise student publications that are subject to prepublication review by an administrator, only 9.4 percent of the advisers gave their publishing situations low marks on a "freedom" scale. Advisers were asked to use a five-point scale to characterize the amount of freedom that their publication had to publish controversial or sensitive material. Categories at each end of the scale were collapsed during data analysis to represent low and high degrees of freedom with the middle point representing a moderate amount of freedom. As shown in Table 1, nearly two-thirds of the respondents ranked their publishing situation as high on the freedom scale.

**TABLE 1**  
**PREPUBLICATION REVIEW BY PERCEIVED FREEDOM**

<u>REVIEW</u>	<u>PERCEIVED FREEDOM</u>			<u>TOTALS</u>
	<u>Low</u>	<u>Medium</u>	<u>High</u>	
NO	0%	18.75	46.88	65.62%
YES	9.38	6.25	18.75	34.35%
TOTALS	9.38%	25.00%	65.62%	100%

$$[X^2 = 6.353, df = 2, p = .04]$$

The high degree of perceived freedom, however, may be attributed in part to the absence or relative infrequency of controversial material in these student publications. Indicative perhaps of self-censorship, only 6.3 percent of the responding advisers rated their publication high on the controversy scale. Thirty-one percent rated their publication moderately controversial, and 62.5 percent characterized the content of a typical issue of their publication as low in controversy.

Not surprisingly, advisers who rated their publication high on the freedom measure also rated it low on controversy. In a three by three crosstabulation table, the high freedom/low controversy cell contained 37.5 percent of the responses. Publications that don't attempt to "rock the boat" are given a freer hand. Only 6.3 percent of the respondents rated their publications high in both freedom and controversy. High freedom/medium controversy rankings were given by 21.9 percent of

advisers. Given the high expected frequency for high freedom and low controversy, the correlation is not statistically significant. [ $\chi^2 = 1.486$  df = 4 p = n.s.]

While only 6.3 percent of advisers rated the content of a "typical issue" of their publication high on controversy, ambitious, controversial stories were published in Tennessee high schools. Among the subjects of such stories, several advisers listed AIDS, including the battle over the allowing AIDS sufferers to attend regular classes, drug testing in schools, drug and alcohol abuse, venereal disease, criticism of the poor facilities at the school, and use of condoms. One newspaper published an expose of coaches seeking to boost their chances to win by enticing good athletes to attend schools out of their attendance zones. Several advisers said they had covered divorce and teen pregnancy, topics that sparked the Hazelwood East censorship fight. One adviser noted that her newspaper had won a writing award for a feature story about three unmarried teenage mothers who would graduate with the class of 1988. Almost no controversy was indicated in responses from yearbook advisers. One said that yearbook coverage of the merger of two schools, one predominantly black, had been controversial because the book reported both positive and negative aspects of the merger process.

As measures of the amount of attention that Hazelwood attracted in Tennessee high schools, advisers were asked whether their publication had published or planned to publish a story about the decision; further, they were asked whether they had had

conversations about the decision with the following types of people: publications staff members, students not on the staff, faculty members, school administrators, school board members, attorneys, local media, parents or other people.

Half of the respondents indicated that stories had been or would be published about decision. As would be expected, this was one of two questions in the survey that drew markedly different responses from yearbook and newspaper advisers. None of the yearbooks planned stories about Hazelwood, whereas 76.5 percent of the newspapers had already published or planned to publish news stories or editorials about the decision.

Responses indicating conversations about the case were categorized to form an attention measure, ranging from no attention to a large amount of attention. The greatest number of respondents (31.3 percent) fell into the "moderate" amount of attention category, meaning that they had conversations with from four to seven types of people. A quarter of the respondents said they had talked with no one about the decision; 28.1 percent scored low on the attention measure, and only 15.6 percent scored high, meaning that they had talked about Hazelwood with people from seven to ten of the specified categories.

As would be expected, most of the conversations advisers reported were with publications staff members (25.3 percent), followed by school administrators (20.5 percent) and faculty members (16.9 percent). About 10 percent of the advisers reported having conversations about the case with members of the local news media.



If advisers' perceptions are correct, there is wide disagreement between student staff members and adults, including faculty members, in their attitudes about the decision. Advisers were asked to assess the majority opinion among the groups that they had talked with about the decision. The predominant opinion among student staff members was disagreement with the Supreme Court's holding, whereas, such disagreement was not prevalent among faculty members and other adults. See Table 2.

TABLE 2

**ADVISERS' PERCEPTION OF OPINION ABOUT HAZELWOOD  
AMONG STUDENT STAFF, FACULTY, OTHER ADULTS**

<u>PERCEIVED OPINION</u>	<u>STAFF</u>	<u>FACULTY</u>	<u>OTHER ADULTS</u>
Majority Agrees	0	40.9	23.5
Majority Disagrees	52.2	18.2	5.9
Opinion Mixed/ No Clear Majority	21.7	31.8	41.2
Interested but Undecided	21.7	0	0
Not Interested/ No Opinion	4.3	4.5	11.8
Adviser Unsure About Opinion	0	4.5	41.2
<u>TOTALS</u>	99.9%	99.9%	100.%

In their own attitudes toward the decision, advisers are aligned with neither other faculty members and adults in the community or with staff members. A majority of the responding advisers (62.5 percent) said they were undecided, either because

they agreed in part and disagreed in part (50 percent) or because they did not know enough about the issues to reach an informed opinion (12.5 percent). One-fourth disagreed with the ruling, and 12.5 percent said they agreed with the Supreme Court's ruling in Hazelwood.

The large percentage of advisers who said they were undecided about the outcome of the case is a particularly surprising result because presumably many, if not most, of the responding advisers had recently attended the Tennessee High School Press Association spring conference at which Mark Goodman, executive director of the Student Press Law Center, was the banquet speaker and had discussed Hazelwood. In addition, the decision had been explained in the THSPA newsletter, which all responding advisers had received. Too, the case was widely publicized in both the popular and trade press, so it is surprising that 62.5 percent of the responding advisers had formed no personal opinion about the case.

That only a quarter of the advisers responding to this survey were in disagreement with the Court's opinion isn't a significantly different attitude than that of newspaper editorial writers, who seemed to view the high school administrator's relationship to the student press as analogous to a publisher, rather than seeing the administrator as an arm of the government.

For many faculty and administrators, free expression for students comes out on the light side of the scale when balanced against the tremendous problems facing public schools today. In a national survey in 1986, 29.6 percent of advisers of high

school student publications and 58.5 percent of the principals agreed or strongly agreed that maintaining discipline in a school was more important than publishing a newspaper free from administrative censorship.<sup>50</sup> Forty-two percent of the advisers and 75 percent of the principals agreed that maintaining discipline was more important than an uncensored press.<sup>51</sup>

None of the independent variables tested, including adviser's journalistic education or amount of advising experience, school enrollment, academic credit for staff, prepublication review, or adviser's perception of freedom and controversy, were statistically significant when correlated with the adviser's attitude toward Hazelwood. The number of responding advisers were equally divided between those who had college training in journalism and those who had not taken journalism courses. Tennessee has no certification requirements for student publications advisers, even where academic credit is received by staff members; thus, many advisers have no college or university training in journalism. Three-quarters of the responding advisers had attended journalism workshops.

The attitude toward Hazelwood on the part of advisers and faculty members might be attributable, in part, to the fact that staff members at three-fourths of the student publications in this survey receive academic credit for their work. Their publishing situation, like that at Hazelwood East, is part of the regular academic curriculum. In its opinion, the Supreme Court, noting that "school officials did not deviate in practice from their policy that production of Spectrum was to be part of the

educational curriculum and a regular classroom activity,"<sup>52</sup> specifically rejected the forum theory that had been accepted at the court of appeals.<sup>53</sup>

Even those 25 percent of the publications in this survey that do not carry academic credit for their staffs could be subjected to administrative censorship in keeping with the Court's opinion in Hazelwood. Justice White, writing for the majority, distinguished the case from Tinker,<sup>54</sup> saying that Tinker concerned "educators' ability to silence a student's personal expression that happens to occur on the school premises" while Hazelwood concerned "educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school."<sup>55</sup> These activities, the Court went on to declare, are part of the school curriculum, even if they do not occur in a traditional classroom setting, "so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences."<sup>56</sup>

It is interesting to note that 45 percent of the responding publications that have prepublication review by a school administrator have no written policy regulations to define the scope of that review. More than half (56.3 percent) of the total responding advisers reported that their publications had no policy guidelines.

The State of Tennessee has not established guidelines or policies governing prior review of student publications. Before

Hazelwood, the U.S. Court of Appeals in the First, Second, Fourth and Fifth Circuits had approved the concept of prior review where specific, narrowly written guidelines existed to mitigate the potentially adverse effects of prior restraint.<sup>57</sup> The Sixth Circuit, in which Tennessee is located, has not ruled on prior review at the high school level. Soffin's 1984 study pointed out that little correlation existed between freedom of expression guidelines developed by state departments of public instruction and their respective federal courts of appeal.<sup>58</sup>

Hazelwood would appear to negate the necessity for clearly stated, narrowly defined guidelines because the Supreme Court majority held that "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."<sup>59</sup> In a footnote, the majority rejected the respondents' suggestion that prepublication control be pursuant to specific written regulations. "To require such regulations in the context of a curricular activity," the majority wrote, "could unduly constrain the ability of educators to educate."<sup>60</sup> The majority left open the question of whether such regulations would be required before school officials could censor non-school sponsored publications that students seek to distribute on school grounds.

The results of this state survey, like the reaction to Hazelwood from much of the professional media, are disappointing to advocates of a strong scholastic press, many of whom devote

time, energy, and money to the effort to preserve free expression rights for students. If advisers who demonstrate enough interest in the scholastic press to enroll their publications in the state high school press organization and to participate in workshops are lukewarm in their support for student's First Amendment rights, then non-participating advisers could be expected to be even less supportive.

The absence or relative infrequency of controversy in most Tennessee student publications, even those without the chilling effect of prepublication review by administrators, indicates that self-censorship may be the norm-- that even before Hazelwood, Tennessee students were not exercising expressive rights they had under Tinker.<sup>61</sup>

The attitude that school officials must have the authority to exercise tight control over student expression--an attitude shared by adults and by the majority of newspaper editors in this survey--may be reflective in part of the intense criticism that public schools have endured during the past decade from every segment of their constituency, including students, parents, taxpayers, and extending even to the Secretary of Education. As has been the pattern in the history of the nation as a whole, institutions under attack attempt to silence their critics by controlling expression. This attitude was reflected in a quotation attributed to the deputy general counsel of the National School Boards Association on the day that Hazelwood was announced. She accused press groups siding with the students of exaggerating the consequences of the ruling. "I understand how

the First Amendment advocates feel," she said, "but I think in the long run we are going to find, if it had gone the other way, we would have had either anarchy or no student newspapers at all."<sup>62</sup>

Others would agree with the sentiments expressed by William Allen White in his 1922 Pulitzer Prize-winning editorial: "...you can have no wise laws nor free enforcement of wise laws unless there is free expression of the wisdom of the people--and, alas, their folly with it. But if there is freedom, folly will die of its own poison, and the wisdom will survive. . . . You say that freedom of utterance is not for time of stress, and I reply with the sad truth that only in time of stress is freedom of utterance in danger. No one questions it in calm days because it is not needed."<sup>63</sup>

<sup>1</sup> \_\_\_ U.S. \_\_\_, slip opinion No. 86-836.

<sup>2</sup>Ibid., p. 12.

<sup>3</sup>795 F. 2d 1368.

<sup>4</sup>Ibid., at 1374 (citing Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 511 (1969)).

<sup>5</sup>Steve Visser, "A Civics Lesson at Hazelwood East," The Nation (Oct. 24, 1987), p. 442.

<sup>6</sup>607 F. Supp. 1450 (1985).

<sup>7</sup>Ibid., at 1466 (citing Frasca v. Andrews, 463 F. Supp. 1043, at 1052 (ED NY 1979)).

<sup>8</sup>Ibid.

<sup>9</sup>Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 511 (1969).

<sup>10</sup>Statement adopted at division's mid-winter meeting in Knoxville, Tenn., Jan. 16, 1988, published in AEJMC News (Feb. 15, 1988), p. 13.

<sup>11</sup>Copies of resolutions are available from the First Amendment Congress, Box 287, University of Colorado, Boulder, Colo. 80309.

<sup>12</sup>Alex Jones, "School Officials Acclaim Decision as Appropriate Strengthening of Authority," New York Times (Jan. 14, 1988).

<sup>13</sup>Copies are available from SPJ, SDX, 53 West Jackson Blvd., Suite 731, Chicago, Ill. 60604.

<sup>14</sup>"Lend Students the Power of Your Press," The Quill (February 1988), p. 12.

<sup>15</sup>"Troubling school censorship ruling went well beyond 'Tinker'-ing," The Quill (May 1988), p. 51.

<sup>16</sup>Ibid.

<sup>17</sup>"Troubling breezes on campus," The Quill (May 1988), p. 46.

<sup>18</sup>The Quill (March 1988), pp. 13-15.

<sup>19</sup>"Gartner views on high school censorship needle 'establishment press' attitude," The Quill (March 1988), p. 45, 48, quoting "Freedom of speech stops at the schoolhouse gate," Wall Street Journal (Feb. 4, 1988) op-ed page.



- 20 "Censoring student papers may teach a lesson that will return to haunt the mainstream press," The Bulletin (February 1988), p. 4, 6.
- 21 "'Dirge of lamentation' is unnecessary," The Bulletin (February 1988), p. 10-11.
- 22 "Supreme Court authorizes student press censorship," Presstime (February 1988), p. 44-45.
- 23 E&P (Feb. 6, 1988), p. 17.
- 24 Washington Journalism Review (March 1988), p. 12.
- 25 "Censor Relaxes at Hazelwood High," Washington Journalism Review (March 1988), p. 10-11.
- 26 Columbia Journalism Review (March/April 1988), p. 18.
- 27 Ibid.
- 28 Ibid.
- 29 Laura Fraser, "Fallout from Hazelwood," Columbia Journalism Review (May/June 1988). GET PAGE NUMBER
- 30 E&P (Jan. 23, 1988), p. 11.
- 31 Ibid.
- 32 Ibid.
- 33 "A correct ruling for the wrong reason," Chicago Tribune, (Jan. 15, 1988).
- 34 Ibid., p. 12.
- 35 Ibid.
- 36 Ibid.
- 37 "Controlling the student press," The Philadelphia Inquirer (Jan. 15, 1988).
- 38 Ibid.
- 39 J. Marc Abrams, "Government censorship upheld," The Philadelphia Inquirer, Jan. 26, 1988.
- 40 Ibid.
- 41 E&P (Jan 23, 1988), p. 11.
- 42 Ibid.

<sup>43</sup>Ibid., p. 12.

<sup>44</sup>Hazelwood School District et al. v. Kuhlmeier et al.,  
\_\_\_ U.S. \_\_\_, slip opinion No. 86-836, p. 15.

<sup>45</sup>See Richard M. Schmidt Jr. and N. Frank Wiggins, "Censoring student papers may teach a lesson that will return to haunt the mainstream press," and Fern Valentine, "Students are not asking for license; they are asking for press freedom," The Bulletin of the American Society of Newspaper Editors (February 1988), pp. 4-8. See also, statement adopted by the Secondary Education Division of AEJMC, AEJMC News (Feb. 15, 1988), p. 13.

<sup>46</sup>Alex Jones, "School Officials Acclaim Decision as Appropriate Strengthening of Authority," New York Times (Jan. 14, 1988).

<sup>47</sup>Paul Parsons, "Student Press Censorship Reborn Within Hours of Hazelwood Ruling," Media Law Notes (Winter 1988), p. 12.

<sup>48</sup>Laura Fraser, "Fallout from Hazelwood," Columbia Journalism Review (May/June 1988). GET PAGE NUMEER

<sup>49</sup>1988-1989 SPJ,SDX F.O.I. Report, p. 9.

<sup>44</sup>J. William Click and Lillian Lodge Kopenhaver, "Principals' and Newspaper Advisers' Attitudes Toward Freedom of the Student Press in the United States," paper presented at the Association for Education in Journalism and Mass Communication annual convention, Norman, Okla., August 1986, p. 3.

<sup>51</sup>Ibid. p. 7.

<sup>52</sup>Hazelwood School District et al. v. Kuhlmeier et al.,  
\_\_\_ U.S. \_\_\_, slip opinion No. 86-836, p. 7.

<sup>53</sup>795 F.2d 1368 (8th Cir., 1986).

<sup>54</sup>Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

<sup>55</sup>\_\_\_ U.S. \_\_\_, slip opinion No. 86-836, p. 10.

<sup>56</sup>Ibid.

<sup>57</sup>See Law of the Student Press (Washington, D.C.: Student Press Law Center, 1985), pp. 54-58; Also, Stan Soffin, "Prior Review Guidelines for Student Publications: State Departments of Public Instruction v. The Federal Circuit Courts," paper presented at the 1985 AEJMC annual convention, Memphis, Tenn.

<sup>58</sup>Soffin, Ibid., p. 12.

<sup>59</sup>\_\_\_ U.S. \_\_\_, slip opinion No. 86-836, p. 12.

<sup>60</sup>Ibid., note 6.

<sup>57</sup>Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

<sup>62</sup>quote attributed to Gwendolyn Gregory in United Press International wire story written by Andrea Neal and transmitted on Jan. 13, 1988.

<sup>63</sup>"To an Anxious Friend," Emporia Gazette, July 27, 1922.

## Abstract

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By Dorothy Bowles, University of Tennessee

This study describes the immediate reaction to Hazelwood v. Kuhlmeier from professional press associations, journalism reviews, and newspaper editorials and uses the results of a mail survey of high school advisers to assess the current level of prepublication review and controversial content and anticipated impact of the case on student publications in Tennessee.

The Society of Professional Journalists, Sigma Delta Chi, writing in four consecutive issues of its magazine, was highly supportive of First Amendment rights for students. The American Society of Newspaper Editors devoted the cover and the first 10 pages of one edition of its magazine to a balanced discussion of the case; the American Newspaper Publishers Association took a roundup news story approach in its single story on the case.

Both Columbia Journalism Review and the Washington Journalism Review published stories about the case; the CJR piece was critical of the opinion, but WJR stopped short of taking a stand against it. The majority of newspaper editorials sampled agreed with the Supreme Court's broadening of school officials censorship authority, taking the position that, like in the "real world," the owner of the press, apparently ever if that owner is an arm of the government, should control what it publishes.

Survey results indicate that Hazelwood had no immediate effect on Tennessee high school publications and few advisers anticipate changes in their publishing situations, a third of which (53 percent of newspapers) are already subject to prepublication review by school administrators. Despite such review, two-thirds of respondents believe that their publications have a "high" degree of freedom in that few items have been censored during the past year. However, the high degree of perceived freedom might be attributed in part to the absence or relative infrequency of controversial material in the publications. Indicative perhaps of self-censorship, only 6.3 percent of the advisers rated a typical issue of their publication high on the controversy scale; yet most listed one or more ambitious, controversial stories that they had published during the past year.

The study also reports survey results on the amount of attention the case received in schools, the advisers' perceptions of attitudes of student staff members, faculty, and other adults in the community, and the advisers' own attitudes about the outcome of the case. None of the independent variables tested, including adviser's journalistic education or amount of advising experience, school enrollment, academic credit for staff, prepublication review, or adviser's perception of freedom and controversy, were statistically significant when correlated with adviser's attitude toward Hazelwood.

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